

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12377 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

S.M.NAIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12377 of 2003
MR ANOOPKRISHNAN for Petitioner No. 1
MR LB DABHI, AGP, for Respondent No. 1,3
MR SR BRAHMBHATT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 05/07/2004

ORAL JUDGEMENT

1. The petitioner challenges the communciation dated 27.5.2002 stating that the services rendered by the petitioner in the State Government cannot be considered as continuous one for the purpose of computing pensionary

benefits.

2. The petitioner joined the services with Public Works Department at WRI Sub Division, Bhadra, Ahmedabad as Technical Assistant (Civil) on 9.2.1965. While the petitioner was working there, he had applied for the post of Mistry in respondent no.2-Kandla Port Trust through proper channel. The petitioner's application was forwarded by the Department to the respondent no.2. Thereafter, after undergoing selection procedure the petitioner was issued an appointment order on 7.2.1978. Pursuant to this order the petitioner was relieved from his employment vide order dated 4.3.1978 and petitioner joined the services of respondent no.2 on 6.3.1978.

3. The petitioner retired from service on 31.1.2001. However, the respondent no.3, vide communication dated 27.5.2002, refused to take into consideration the services rendered by the petitioner in the State Government on the ground that his services were not continuous as he had submitted resignation to the Public Works Department. It is this communication which is challenged by the petitioner in the present petition.

4. Learned counsel for the petitioner, after relying upon various circulars of the Government, submitted that where employees of the State Government/State Autonomous Bodies/State Statutory Bodies have been absorbed in Central Autonomous Bodies, their past services are counted for pension purposes and such benefit is wrongly denied to the petitioner. He submitted that the petitioner had applied to respondent no.2 through proper channel and therefore there is no justification for denying him continuous service.

5. Learned counsel for the respondents submitted that the petitioner had given resignation from respondent no.3 and therefore his past services cannot be taken into consideration for pensionary benefits.

6. Learned counsel for the petitioner relied upon a decision of this Court dated 14.9.1998 in the case of Todarmal Jiva Yadav Vs. State of Gujarat in Letters Patent Appeal No.1024/95 in Special Civil Application No.11439/1994. In that case the appellant was serving in the State Government and thereafter joined the services of Kandla Port Trust. He had also resigned from the State Government to join Kandla Port Trust. While negating the contention that the appellant had resigned from the State services and therefore he is not eligible to get past services, this Court held that the services

rendered by him to the State Government should be counted for the purpose of pension.

7. In the present case there is no dispute that the petitioner has put in 13 years service with the State Government. His application was sent through proper channel. Even the Provident Fund of the petitioner has been transferred to respondent no.2. In view of the aforesaid decision rendered in LPA No.1024/95, it cannot be said that merely because the petitioner had tendered his resignation he is not eligible for taking the benefit of his past services. The ratio laid down in the above decision of the Division Bench is squarely applicable to the facts of the case on hand and therefore the present petition is required to be allowed.

8. In the result, the petition is allowed. The impugned communication dated 27.5.2002 is hereby quashed and set aside. It is held that the services rendered by the petitioner in the State Government shall be counted for the purpose of computing his pensionary benefits. The concerned respondent authority shall calculate the pensionary benefits of the petitioner accordingly and to deposit the same with the second respondent within a period of one month from the date of receipt of copy of this order. The second respondent shall extend the pensionary benefits available to the petitioner accordingly by passing appropriate orders. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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